

## **Exhibit 58**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ORCHARD HOTEL, LLC,

Plaintiff,

-against-

D.A.B. GROUP, LLC; ORCHARD CONSTRUCTION, LLC; FLINTLOCK CONSTRUCTION SERVICES LLC; JI K MECHANICAL INC.; EDWARD MILLS & ASSOCIATES, ARCHITECTS PC; CASINO DEVELOPMENT GROUP, INC.; CITYWIDE CONSTRUCTION WORKS INC.; EMPIRE TRANSIT MIX INC.; MARJAM SUPPLY CO., INC.; ROTAVELE ELEVATOR INC.; SMK ASSOCIATES INC.; FJF ELECTRICAL CO. INC.; CITY OF NEW YORK; NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE; LEONARD B. JOHNSON; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; BROOKLYN FEDERAL SAVINGS BANK; STATE BANK OF TEXAS and JOHN DOE #1 through JOHN DOE #100, the last 100 names being fictitious, their true identities unknown to plaintiffs, and intended to be the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

Index No. 850044/2011

Motion Seq. No. 15

**STIPULATION  
AND ORDER**

Defendants.  
-----X

This matter having come before the Court by motion of Plaintiff Orchard Hotel, LLC (Motion Seq. No. 15), and Defendant D.A.B. Group LLC, without admitting to any allegation set forth in Plaintiff's motion papers, having agreed with Plaintiff, by and between the parties' respective counsel, to entry of an order pursuant to CPLR § 6301 upon the terms set forth herein, and for good cause having been shown;

IT IS HEREBY ORDERED that defendant DAB (as hereinafter defined) shall not contact or communicate with plaintiff Orchard (as hereinafter defined) by any means, including without

limitation by phone, email, or in-person, unless such contact or communication occurs in the presence of both DAB's and Orchard's respective attorneys of record in this matter; and

IT IS FURTHER ORDERED that DAB shall not visit Orchard's office or the office, home, or place of worship of any Orchard Party (as hereinafter defined); provided, however, that DAB may meet with Orchard by mutual agreement in the presence of both DAB's and Orchard's respective attorneys of record in this matter; and

IT IS FURTHER ORDERED that DAB shall terminate all arbitrations and non-judicial proceedings, including without limitation all proceedings before rabbinical courts, against David Aviram and Y. David Scharf, and shall withdraw all notices and summonses relating to such arbitrations and proceedings, and DAB shall not initiate any further arbitrations or non-judicial proceedings, including without limitation any proceeding before a rabbinical court, against Orchard or any Orchard Party arising from or relating to the above-captioned action, other than within this action or in a state or federal court; and

IT IS FURTHER ORDERED that DAB shall not enter upon 139-141 Orchard Street, New York, New York (the "Mortgaged Property") outside the presence of Court-appointed Receiver Simon Miller; and

IT IS FURTHER ORDERED that notwithstanding anything to the contrary herein, this Stipulation and Order shall not prohibit DAB's and Orchard's respective attorneys from communicating directly for any purpose; and

IT IS FURTHER ORDERED that for purposes of this Stipulation and Order –

“DAB” means D.A.B. Group LLC and its owners, principals, members, directors, officers, managers, employees, and representatives, including without limitation Ben Zhavian (a.k.a. “Zvi Benjamin Shavian,” a.k.a. “Ben Zahavian”); and

“Orchard” means Orchard Hotel, LLC and any of its owners, principals, members, directors, officers, managers, employees, and representatives, including without limitation Russel Bernard, Jordan Socaransky, Chad Goodman, David Aviram, Edward Martell, Danielle Lesser, Y. David Scharf, Westport Capital Partners LLC, Maverick Real Estate Partners LLC, the Kor Group and Morrison Cohen LLP (each, an “Orchard Party”); and

IT IS FURTHER ORDERED that Orchard’s motion for a temporary restraining order and preliminary injunction (Motion Seq. No. 15) is hereby withdrawn with prejudice; and

IT IS FURTHER ORDERED that the Clerk of Court is directed to seal (i) the Affirmation of Urgency Y. David Scharf in Support of Preliminary Injunction and *Ex Parte* Temporary Restraining Order dated November 12, 2013 and all exhibits thereto [Doc. Nos. 751-760], (ii) the Affidavit of Chad Goodman dated November 12, 2013 [Doc. No. 761], (iii) the Affidavit of Jordan Socaransky dated November 12, 2013 [Doc. No. 762], and (iv) the Affirmation of William Wallace in Opposition to Order to Show Cause dated November 18, 2013 [Doc. No. 763].

[continued on next page]

By executing this Stipulation and Order, counsel to DAB represents that he has discussed the foregoing provisions with DAB's principal, Ben Zhavian, and DAB and Zhavian have agreed to be bound thereto.

Dated: November 18, 2013

MORRISON COHEN LLP

By: 

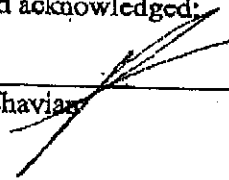
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Agreed and acknowledged:

  
Ben Zhavian

Dated: 12/9/13, 2013

SO ORDERED

  
J.S.C.  
**CHARLES E. RAMOS**